

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
April 8, 2002

In Reply Refer To:
1800B3-IB

Cary S. Tepper, Esq.
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In re: W216BI, Lexington, N.C.
Facility No. 90671
File No. BPFT-19980514TD

Dear Mr. Tepper:

This letter concerns the uncontested March 27, 2002 request filed on behalf of Positive Alternative Radio, Inc. ("PAR") for waiver of 47 C.F.R. § 73.3598 to afford it additional time to construct the referenced station.

The staff granted PAR's initial permit on April 16, 1999, requiring the permittee to complete construction and file a covering license application by April 16, 2002. PAR states that all equipment necessary for this construction is on hand, but indicates that rare and exceptional events beyond its control resulted in the loss of its permitted site, a water tower owned by the City of Lexington, North Carolina ("the City"). PAR documents that the City, in direct response to the extraordinary events of September 11, 2001, adopted new homeland security measures restricting access to this primary part of its utility infrastructure, reversing its earlier assurance of site availability.¹ The City acknowledges that the loss of access was through no fault of PAR. PAR argues that it has an exemplary record of building broadcast stations within Commission deadlines, but that the unusual circumstances here have prevented its efforts in this one instance. PAR states that it quickly identified an alternate site, but that additional time is necessary to secure approval from both the Federal Aviation Administration and this agency.

It is well established that the Commission can waive any of its rules, upon a finding of good cause consistent with the public interest. *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972). Section 73.3598(a) of the Commission's rules provides a three-year period to complete authorized construction and to file a covering license application. The Commission recognizes that "there may be

¹*Letter to Vincent E. Baker, P.E. from the City of Lexington, North Carolina* (February 7, 2002), Attachment No. 2 to Request.

rare and exceptional circumstances . . . which would warrant the tolling of construction time.” *Memorandum Opinion and Order* in MM Docket 98-43, 14 FCC Rcd 17525, 17541 (1999).

We believe that rare and exceptional circumstances are present in the instant situation. PAR demonstrates a direct link between the extraordinary events of September 11, 2001 and its loss of access to the approved site needed to complete construction pursuant to the referenced construction permit. The unusual circumstances leading to loss of site were entirely beyond PAR’s control. PAR learned of the lack of access approximately two months prior to expiration of its permit, and documents that during that time it has been diligently making alternate site arrangements.² Given these factors, a waiver of our rules is warranted.

Accordingly, PAR’s request for waiver of the Commission’s tolling rules, 47 C.F.R. § 73.3598(a), IS GRANTED and the deadline for construction is tolled for a sixty day period from the current expiration date to provide time for PAR to file a complete and acceptable application to modify W216BI’s permitted facilities. If no such application is filed within this period, *i.e.*, by June 16, 2002, the permit will expire. If, however, PAR files its modification application within the specified period, the permit will remain “tolled” until sixty days from the date the staff acts on PAR’s application to allow it an opportunity to complete construction and to file a covering license application. The goal of these sixty-day periods is to put PAR in a similar position to that in which it would have been in February 2002, had the City not revoked site availability.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Office of Broadcast License Policy
Media Bureau

²*Letter to Mr. Cary Tepper, Esq. from Carl E. Smith Consulting Engineers*, March 27, 2002, Attachment No. 3 to Request.

